

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 99-0016****Adjusted Gross Income Tax
For Tax Years 1990 through 1994**

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ISSUE**I. Adjusted Gross Income Tax—Statute of Limitations for Assessment**

Authority: IC 6-3-2-2; IC 6-3-4-1; IC 6-8.1-5-2

Taxpayer protests assessment of Adjusted Gross Income Tax.

STATEMENT OF FACTS

Taxpayer is involved in renting property. For the years under audit, taxpayer was included on the unitary returns of its parent company. During a prior audit, taxpayer had been removed from the unitary filing since taxpayer had never petitioned for and received permission from the Department to be included on the parent company's unitary return. The Department's position was established in a Letter of Findings issued in May of 1994. In accordance with these prior audit findings, the Department issued an audit report that computed the adjusted gross income tax of taxpayer on a non-unitary basis.

I. Adjusted Gross Income Tax—Statute of Limitations for Assessment**DISCUSSION**

Taxpayer was assessed adjusted gross income tax for the years in question after the Department determined that taxpayer was ineligible to be included on the combined returns of its parent corporation. Taxpayer protests the imposition of these taxes on the basis that the Department issued the assessments after the statute of limitations had expired. Additionally, taxpayer asserts that all authorized agreements extending the time limit for issuing the assessments expired at least a year before the Department issued the assessments. Taxpayer believes that the Department incorrectly relied on similar agreements covering the parent corporation and its affiliates, which extended the time limit for issuing assessments past the date when the Department actually did issue them.

To support its position that the assessments were issued too late, taxpayer refers to IC 6-8.1-5-2(a), which provides in part:

Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or any of the following:

(1) the due date of the return; ...

Taxpayer points out that the Department issued its assessments on December 11, 1998, and the extended deadline for filing, even on the latest year in question, was October 15, 1994. Therefore, taxpayer believes, the Department issued its assessments too long after the due dates of the returns.

Regarding the statute of limitations on issuing assessments, the Department refers to IC 6-8.1-5-2(c), which states:

If a person files a fraudulent, unsigned, or substantially blank return, *or if a person does not file a return*, there is no time limit within which the department must issue its proposed assessment. (Emphasis added.)

Taxpayer did not file its own returns for those years, as required by IC 6-3-4-1, which states in part:

Returns with respect to taxes imposed by this act shall be made by the following:

...

(3) Every corporation having for the taxable year any gross income from sources within the state of Indiana; ...

The Department proceeded on the grounds that there was no time limit within which the proposed assessments must have been issued.

Taxpayer asserts that it timely filed as part of the parent corporation's returns. Regarding those returns, IC 6-3-2-2(q) states:

Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a particular taxable year or years.

As the Department established in a prior Letter of Findings, neither taxpayer nor its parent corporation had petitioned the Department for permission for taxpayer to be included on the parent corporation's combined returns. Therefore, taxpayer was not eligible to be included on the combined returns. The Department conducted an audit of the parent corporation that excluded taxpayer from those combined returns.

Taxpayer also believes that the Department relied on agreements to extend the date for issuing assessments which were not applicable to taxpayer, since those agreements were between taxpayer's parent corporation and the Department. Taxpayer insists that those agreements are not binding on taxpayer, since they were not signed by an individual authorized to do so by taxpayer. Taxpayer states that the auditor always requested and received separate agreements for extension of time from the parent corporation's subsidiaries, but that no such agreement was reached with taxpayer after one that extended the time limit for issuing an assessment on the year 1992 until July 15, 1997.

Taxpayer wants the Department to allow it to select when the parent company's authorization was valid and when it was not. On one hand, taxpayer claims that it did file by being included on the parent company's unitary return. On the other hand, taxpayer claims that the parent company is not authorized to extend deadlines to issue assessments. The Department can not agree with this position. If the parent company were authorized to include taxpayer on its returns in the first place, then it would be authorized to extend deadlines to issue assessments. If the parent company were not authorized to extend deadlines to issue assessments, it would not be authorized to include taxpayer on its returns. The ability to authorize one establishes the ability to authorize the other. The lack of ability to authorize one establishes the lack of ability to authorize the other.

Since it has already been established that there was no time limit for the issuance of assessments, it does not matter whether or not the extensions were authorized. The extensions were never needed in the first place. There was nothing to extend. It makes no difference if the Department reached agreements for extensions with the parent company's other subsidiaries.

In conclusion, taxpayer was not eligible to be included on the combined returns, as established by IC 6-3-2-2. Taxpayer did not file its own returns, as required by IC 6-3-4-1. Therefore, IC 6-8.1-5-2(c) is applicable here. Taxpayer did not file returns for the years in question, therefore there was no time limit within which the Department must have issued the assessments. The agreements for extension of time to issue assessments were extraneous.

FINDING

Taxpayer's protest is denied.